

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

NFC Acquisition, LLC,

Case No. 3:08CV2450

Plaintiff

v.

ORDER

Comerica Bank, et al.,

Defendant

This is a civil suit that has been removed from the Court of Common Pleas of Huron, Ohio. Pending is plaintiff's motion to remand. [Doc. 7].

On review of the motion, it appears that the plaintiff, *inter alia*, is contending that only the defendant Norwalk Furniture Corporation, which has filed a petition in the Bankruptcy Court, can move to stay these proceedings on the basis of the stay thereon issued by that court.

Plaintiff has not, however, served either that corporation or any of the other Ohio defendants, on whose presence in this suit plaintiff relies in seeking remand due to the lack of diversity of citizenship. The effect of lack of service on the Norwalk Furniture Company creates a Catch-22.

In any event, plaintiff has 120 days within which to perfect service of process on all defendants. Fed. R. Civ. P. 4(m). If service is not perfected within that time period, the complaint will, as provided by that Rule, be dismissed as to any unserved defendant.

So that the Norwalk Furniture Company shall have the opportunity, if it so desires, to assert the bankruptcy stay in defense of plaintiff's claims against it, the Clerk shall cause notice *via* a copy of this Order to be served on the Trustee in the bankruptcy proceeding. The Trustee is hereby asked

to notify the court and counsel in this case what, if any response he or she wishes to make to the pendency of the complaint.

Pending perfection of service of process and appearance by the unserved defendants and a response by the Bankruptcy Trustee, proceedings re. the pending motion for remand shall be stayed, as shall the case management conference.

It is, therefore,

ORDERED THAT:

1. Plaintiff shall perfect service of process on unserved defendants within the requisite 120 day period, or its complaint against any unserved defendants shall be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m);
2. The Clerk shall cause a copy of this Order to be served on the Trustee in Bankruptcy for the Norwalk Furniture Company; said Trustee is hereby requested to respond as requested herein; and
3. Further proceedings re. plaintiff's pending motion to remand and the case management conference be, and they hereby are held in abeyance pending services of unserved defendants and response as requested herein from the Bankruptcy Trustee.

So ordered.

s/James G. Carr
James G. Carr
Chief Judge